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Date: 12/9/01 7:43pm
Subject: microsoft settlement

The settlement language largely allows Microsoft to stifle competition and eliminate any trace of free market mechanisms with the computing community. Limiting the APIs in the manner laid out by the settlement are limiting to Microsoft's main competition: Free and Open Source Software. (Free is defined here as "without restriction". Free is not meant to be "free of cost").

This software is created by individuals in informal and generally noncommercial cooperation. This provides great benefits for American consumers. Free and Open Source Software is **the** essential beneficiary of the ruling against Microsoft. Consumers were harmed by Microsoft's actions, not necessarily business interests. It is essential that this pro-consumer movement be helped by the settlement. Instead they are pointedly discriminated against by the settlement.

Under provisions to release the API of Microsoft products, Microsoft is given discretion as to who they will release information: namely, "viable businesses", with Microsoft being able to interpret that as they wish.

Instead of this model, APIs should be made fully public. Individuals should be able to ask questions of Microsoft regarding these APIs, and have them answered publicly. If it seems too difficult to allow any individual to ask such a question, an electronic petition process could be used instead, as long as a group of individuals can have the same weight as a commercial organization.

It is essential that the API information be made public. If it is hindered by any sort of NDA it will be **absolutely useless** to Free/Open Source software projects. We have formed a legal and social structure where we do not have the ability to keep pieces of our code private. This process must be respected by the settlement and is of large benefit to consumers.

It is also essential that non-commercial groups be able to access API documentation, and have questions answered by Microsoft. In general, it is dangerous to allow Microsoft to have discretion on any aspect of this manner. They can use that to further punish their most stringent competitors.

It is also dangerous to grant discretion on security. While it is acceptable that they be allowed a short private period to resolve security issues before making them public, all aspects of their systems must be made public. It is easy to add security aspects to nearly any

portion of a system. It is potentially a good thing that they add security at many parts of their system.

However, they should not need to be private about their security measures to ensure the effectiveness of that security. The Free/Open Source communities have created large amounts of software that is secure while being open. Microsoft should do the same. This process is has been demonstrated over and over for as long as computer security has existed.